

(February 1996).

## Chapter 33. Disclosure by Licensee

### §3301. Licensee as Purchaser or Lessee

A. A licensee shall not acquire an interest in, buy for himself, or rent or lease property for himself, his firm or any member thereof, or any corporation in which he has an interest, properties listed with him, or his company or firm, without making his true position known in writing to the owner or lessor prior to entering into the sales contract or lease agreements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:399 (October 1977), amended LR 4:480 (December 1978), LR 9:318 (May 1983), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

### §3303. Licensee as Seller or Lessor

A. A licensee shall make known in writing to a purchaser or lessee any ownership interest the licensee, his firm or any member thereof, or any corporation in which he has an interest, has in the property he is selling or leasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

## Chapter 34. Agency Disclosure

### §3401. Definitions

A. In addition to the definitions established by §1431 of the Louisiana Real Estate License Law:

*Buyer's Agent*—a licensee who pursuant to a written buyer brokerage agreement alone, or as a subagent of a buyer's agent, finds and obtains a seller for real property.

*Disclosed Dual Agency*—an agency relationship in which the brokerage firm represents both buyer and seller in a real estate transaction with the prior knowledge and written consent of all parties.

*Disclosed Dual Agent*—a licensee who represents both the buyer and the seller in a real estate transaction with the prior knowledge and written consent of all parties.

*Selling Agent*—a listing agent who acts alone, or a subagent, or a buyer's agent, who sells or finds and obtains a buyer for real property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993).

### §3403. Listing Agency Disclosure

A. Listing agreements for the sale or lease of real estate shall incorporate the following disclosure statement.

"Absent a written agreement to the contrary, a real estate agent is the agent or subagent of the seller/lessor under Louisiana law. As such, the listing agent acts as the agent for the seller. As such, the seller's agent owes a fiduciary duty of utmost care and loyalty to the seller, and may not disclose to a buyer information about what price or terms the seller will accept other than the price or terms listed. A seller's agent does owe a duty of fair dealing to a buyer, and a duty under Louisiana law to disclose the existence of any known material defects in the property."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993).

### §3405. Disclosure Regarding Real Estate Agency Relationships

A. Real estate licensees shall utilize the Disclosure Regarding Real Estate Agency Relationship form in all real estate transactions involving the sale or lease of real property.

B. In the event there is a change in the agency relationship between a licensee and a prospective seller/lessor or a prospective buyer/lessee subsequent to disclosure having been made in accordance with this Chapter, the licensee shall execute a new Disclosure Regarding Real Estate Agency Relationship form to reflect the change in the agency relationship between the parties with respect to the proposed real estate transaction.

C. The licensee shall retain a copy of each form signed by a seller/lessor and/or a buyer/lessee or its representative in order to demonstrate compliance with this Section.

D. In any circumstance in which a seller/lessor or a buyer/lessee refuses to sign the disclosure form the licensee shall complete the form as required and attach a written declaration citing the reasons given by the seller/lessor or buyer/lessee for not signing the disclosure form.

E. This Chapter does not apply to residential leases of one year or less where no purchase of real estate is contemplated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993).

### §3407. Seller/Lessor Agency Disclosure

A. A real estate licensee dealing face to face with a

prospective buyer/lessee shall provide the prospective buyer/lessee or its representative with a copy of the Disclosure Regarding Real Estate Agency Relationship form with the Disclosure to Buyer/Lessee completed and signed by the licensee before the time the first of the following events occur:

1. discussing any position the prospective buyer/lessee may wish to take in negotiating a contract to purchase, rent or lease a specific property, such as the amount of terms to be offered; provided, however, that a real estate licensee may qualify a prospective buyer/lessee to a price range or generally discuss prices and financing prior to making disclosure in accordance with this Section;

2. preparing a written offer to purchase, rent, or lease real property.

B. This Section does not apply to:

1. a real estate licensee who enters into a written agreement to represent a prospective buyer/lessee prior to the occurrence of either of the events cited in §3407.A.1 and 2, above; or

2. to a real estate licensee acting as a principal and not as an agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993).

#### **§3409. Buyer/Lessee Agency Disclosure**

A. Unlisted Property

1. A real estate licensee representing a prospective buyer/lessee under a written buyer brokerage agreement involving real estate not listed for sale or lease with a licensed broker shall disclose to a prospective seller/lessor the licensee's agency relationship with the prospective buyer/lessee at the first contact regarding the transaction.

2. The licensee shall provide the prospective seller/lessor with a copy of the Disclosure Regarding Real Estate Agency Relationship form Appendix 1 with the Disclosure to Seller/Lessor completed and signed by the licensee before discussing any position the prospective seller/lessor may take in negotiating a contract to purchase, rent, or lease the property.

B. Listed Property

1. A real estate licensee representing a prospective buyer/lessee under a written buyer brokerage agreement involving real estate listed for sale or lease with a licensed broker shall disclose to the listing broker or his representative the licensee's agency relationship with the prospective buyer/lessee at the first contact regarding the transaction.

2. The listing broker or his representative shall provide the prospective seller/lessor with a copy of the Disclosure Regarding Real Estate Agency Relationship form with the

Disclosure to Seller/Lessor completed and signed by the listing broker or his representative prior to discussing any position the seller/lessor may take in negotiating a contract to sell, rent, or lease the listed property or presenting a written offer to purchase, rent, or lease the listed property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1129 (September 1993).

#### **§3411. Dual Agent/Agency Disclosure**

A. A dual agent/agency relationship is established when a listing broker or his sponsored licensee executes a written buyer brokerage agreement with a prospective buyer/lessee which will result in any mention or discussions concerning real estate listed by an owner as being for sale or lease with a listing broker or with the listing broker's firm by a licensee sponsored by the licensed broker.

B. A listing broker or his sponsored licensee representing both a prospective seller/lessor and a prospective buyer/lessee in a proposed real estate transaction shall disclose to both the seller/lessor and the buyer/lessee the licensee's dual agent/agency relationship and obtain the written consent of both the prospective seller/lessor and the prospective buyer/lessee to the dual representation.

C. The listing broker or his sponsored licensee shall provide both the prospective seller/lessor and the prospective buyer/lessee with a copy of the Disclosure Regarding Real Estate Agency Relationship form with the Disclosure to and Consent of Buyer/Lessee and Seller/Lessor to Dual Agent/Agency signed by the licensee, the prospective seller/lessor and the prospective buyer/lessee prior to any discussion concerning the listed property with either the prospective seller/lessor or the prospective buyer/lessee or preparing a written offer to purchase, rent, or lease the listed property.

Note: The Disclosure Regarding Real Estate Agency Relationship form can be obtained from the Louisiana Real Estate Commission, Baton Rouge, LA. This form replaces all previous agency disclosure forms prescribed and promulgated by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 18:26 (January 1992), amended LR 19:1130 (September 1993).

## **Chapter 35. Presentation of Offers**

### **§3501. Timely Presentation of Offers**

A. All bona fide written offers for the purchase of real estate shall be submitted to a seller when such offers are received prior to the broker or his representative having knowledge that the seller has accepted an offer, in writing.

B. Both the listing broker and the selling broker shall insure that all offers and counter offers presented in a real

estate transaction are clearly annotated to indicate the time of day and date the offers were made, accepted or rejected by the parties to the transaction.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435 and R.S. 37:1455.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Real Estate Commission, LR 2:453 (December 1976), amended LR 3:399 (October 1977), LR 4:480 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

### **§3503. Negotiations and the Listing Broker**

A. Negotiations concerning property listed exclusively with one broker shall be carried on with the said listing broker, not the owner, except with the expressed consent of the said listing broker.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Real Estate Commission, LR 3:399 (October 1977), amended LR 4:480 (December 1978).

### **§3505. Cooperative Transactions**

A. All written offers which are presented to a listing broker by a cooperating broker shall be presented to the owner of the listed property for his consideration and decision immediately, without delay and/or as soon as possible without regard to any consideration of other possible or pending offers of which the listing broker may be aware.

B. All written offers presented by a cooperating broker to a listing broker shall be annotated by the listing broker to indicate the time of day and date the offer was received from the cooperating broker.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Real Estate Commission, LR 3:399 (October 1977), amended LR 4:480 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

### **§3507. Rejection of Offers**

A. All written offers presented to the owner and not accepted shall be clearly marked as rejected and signed by the owner (seller).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Real Estate Commission, LR 3:399 (October 1977), amended LR 4:480 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

### **§3509. Broker's Authority to Reject Offers**

A. In the event the owner (seller) is not available and grants authority to the listing broker to reject an offer, the listing broker shall mark the offer as rejected and sign the offer

as such in lieu of the owner (seller), but the listing broker shall nevertheless forward a copy of the rejected written offer to the owner (seller) for his signature acknowledging the rejection of the offer. The copy of the rejected offer signed by the owner (seller) shall be retained in the files of the listing broker. In the case of a cooperative transaction, the cooperating listing broker shall provide a copy of the rejected offer bearing the signature of the owner to the cooperating selling broker.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Real Estate Commission, LR 3:399 (October 1977), amended LR 4:480 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

## **Chapter 47. Investigations and Hearings**

### **§4701. Complainants**

A. Complaints alleging violations of the Louisiana Real Estate License Law and/or rules and regulations of the Commission shall bear the original signature of the complainant or that of his legal representative before any action will be taken thereon by the Commission.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435 and R.S. 37:1453.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Real Estate Commission, LR 3:400 (October 1977), amended LR 4:480 (December 1978), LR 9:318 (May 1983), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

### **§4703. Addition of Respondents to Investigations**

A. If during the conduct of an investigation documented probable cause is established indicating that violations of the Louisiana Real Estate License Law and/or rules and regulations of the Commission have been committed by licensees or timeshare registrants other than the licensee or timeshare registrant against whom the original complaint was made, the additional licensees or timeshare registrants may be added as respondents to the investigation in the absence of any written complaint alleging such violation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435 and R.S. 37:1455.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Real Estate Commission, LR 3:400 (October 1977), amended LR 4:480 (December 1978), LR 9:318 (May 1983), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

### **§4705. Executive Director May Authorize Investigation**

A. Upon documented probable cause and with the concurrence of the Commission attorney, or, in his absence, the chairman of the Commission, the executive director of the Louisiana Real Estate Commission may issue written authorization to investigate apparent violations of the

Louisiana Real Estate License Law and/or the rules and regulations of the Commission. Any investigation so initiated will be reported to the Commission at the next regular scheduled meeting.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435 and R.S. 37:1436.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Real Estate Commission, LR 3:400 (October 1977), amended LR 4:480 (December 1978), LR 9:318 (May 1983), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

#### **§4707. Adjudicatory Proceedings**

A. When, as a result of an investigation, it appears that violations of the Louisiana Real Estate License Law may have been committed by a licensee, registrant or certificate holder, the violations may be adjudicated through informal or formal adjudicatory proceedings.

##### **1. Informal Adjudicatory Proceedings**

a. The complaint may be concluded informally without public hearing on the recommendation of the hearing examiner and the concurrence of the executive director.

b. A preliminary notice of adjudication will be issued to advise the respondent of the violation or violations alleged and to advise the respondent that the matter can be resolved informally should the respondent desire to admit to committing the act or acts specified and submits a written request that the matter be resolved informally.

c. A hearing officer will be appointed by the executive director to conduct an informal hearing with the respondent.

d. The informal hearing will be attended by the case investigator, who will respond to questions concerning the investigation which resulted in the allegations, and the hearing examiner, who will inform the hearing officer of the administrative, jurisdictional, and other matters relevant to the proceedings. No evidence will be presented, no witnesses will be called and no formal transcript of the proceedings will be prepared by the Commission. Statements made during the informal proceedings may not be introduced at any subsequent formal adjudicatory proceedings without the written consent of all parties to the informal hearing.

e. If the informal hearing results in an admission by the respondent that violations were committed as alleged, the hearing officer may enter into a recommended stipulations and consent order to include the imposition of any sanctions authorized by the Louisiana Real Estate License Law. In the written document the respondent must stipulate to having committed an act or acts in violation of the license law or the rules and regulations of the Commission, accept the sanctions recommended by the hearing officer, and waive any rights to request a rehearing, reopening, or reconsideration by the Commission, and the right to judicial appeal of the consent order.

f. If at the informal hearing the respondent does not

admit to having committed the act or acts specified, does not accept the sanctions recommended by the hearing officer, or does not waive the specified appellate rights, the alleged violations will be referred to the Commission along with a recommendation for a formal adjudicatory hearing.

g. If the respondent does execute a stipulations and consent order, the executive director shall submit the document to the Commission at the next regular meeting for approval and authorization for the executive director to execute the consent order in the name of the Commission.

h. The actions of the Commission relative to all consent orders shall be noted in the minutes of the meeting at which the consent order is approved and authorization is granted to the executive director to execute the order in the name of the Commission.

i. Any consent order executed as a result of an informal hearing shall be effective on the date approved by the Commission.

##### **2. Formal Adjudicatory Proceedings**

a. All formal public adjudicatory hearings shall be conducted under the auspices of R.S. 37:1456 and Chapter 13 of Title 49 of the Louisiana Revised Statutes.

b. The order issued by the Commission pursuant to any formal public adjudicatory proceeding shall become effective 11 days from the date the order published by the Commission is received by the respondent licensee, or on the date the notice of denial of a request for rehearing, reopening, or recommendation of the decision or order by the agency is received by the respondent licensee.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435 and R.S. 37:1453.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), amended LR 21:460 (May 1995), repromulgated LR 21:932 (September 1995), LR 22:95 (February 1996).

#### **§4709. Stay of Enforcement**

A. The filing of a petition for judicial review by a respondent licensee does not itself stay enforcement of an order issued by the Commission. A stay of enforcement will be granted only when directed by the court conducting a judicial review of adjudication.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435 and R.S. 37:1453.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

#### **§4711. Costs of Adjudicatory Proceedings**

A. On a finding that a respondent has committed the violations as alleged in any formal or informal adjudicatory proceedings, the Commission may assess the respondent the administrative costs of the proceeding, as determined by the Commission. Payment of these costs shall be a condition of the

reinstatement of any license, registration, or certificate issued by the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435 and R.S. 37:1453.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

## Chapter 49. Licensee and Timeshare Registrant's Responsibilities

### §4901. Knowledge of the Law

A. It shall be the duty of all licensees and timeshare registrants to have knowledge and be aware of all laws regulatory the real estate industry in Louisiana including, but not limited to, these rules and regulations and the Louisiana Real Estate License Law as set forth in Chapter 17, Title 37 of the Louisiana Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:400 (October 1977), amended LR 4:480 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989).

## Chapter 55. Franchise Operations

### §5501. Registration of Franchise Name

A. Unless registered in Louisiana with the Louisiana Real Estate Commission as hereinafter specified, no person, partnership or corporation shall offer for sale, lease, rent, or use in any way, any franchise name to be publicly utilized or used by a licensed Louisiana real estate broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435 and R.S. 37:1465.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 4:481 (December 1978).

### §5503. Registration of Franchise Operation

A. Unless registered in Louisiana with the Louisiana Real Estate Commission as hereinafter specified, no person, partnership, or corporation engaged in a franchise operation of real estate brokerage firms shall operate in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435 and R.S. 37:1465.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 4:481 (December 1978).

### §5505. Application for Registration

A. Any person, partnership, or corporation which intends to operate or do business as a franchiser of real estate brokerage firms in Louisiana shall make application to the Louisiana Real Estate Commission for registration. Applications for registration shall contain the following information and supporting documents:

1. name, address, and whether the applicant is a person, partnership, or corporation;
2. partnership—the names and addresses of the individual members thereof;
3. corporation—names and addresses of officers and members of board of directors and place of incorporation;
4. if a partnership or corporation—a certified copy of the articles of partnership or incorporation should be attached to the application, along with a copy of the charter of the same;
5. a certified, audited financial statement disclosing the current financial condition of the applicant;
6. a statement of the business activities of the applicant, including a description of the franchise agreement to be used in connection with the Louisiana real estate brokers, and a list of the states in which the franchiser is qualified to do and/or is doing business.

B. Upon receipt of the application for registration, the Commission may require such additional information as it deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435 and R.S. 37:1465.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 4:481 (December 1978).

### §5507. Secretary of State as Applicant's Agent

A. If the applicant is not a resident of Louisiana, it shall appoint the Louisiana secretary of state to act as the applicant's agent for the service of all judicial process or legal notices directed to such applicant. Service upon the agent so designated shall be equivalent to personal service upon the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435 and R.S. 37:1465.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 4:481 (December 1978).

### §5509. Annual Registration

A. If the requirements set forth herein are met the Commission shall register the franchiser for a period of one year. The franchiser shall then renew each year by furnishing the Commission with all information as would modify or change the information previously submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435 and R.S. 37:1465.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 4:481 (December 1978).

### §5511. Renewal Requirements

A. Upon application for renewal each year by the franchiser, the Commission shall also be furnished with a statement of the gross dollar earnings by the franchiser in the state of Louisiana for the preceding year.